



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 8 2009

Chris K. Gohar
Fish & Richardson P.C.
1717 Main Street
Suite 5000
Dallas, Texas 75201

RE: MUR 6101
Foundations Inc.

Dear Mr. Gohar:

On October 28, 2008, the Federal Election Commission notified your client, Foundations Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on April 21, 2009, found that there is reason to believe Foundations Inc. violated 2 U.S.C. §§ 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Joshua Smith, the attorney assigned to this matter, at (202) 694-1624.

Sincerely,



Matthew S. Petersen
Vice Chairman

Enclosures
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: Foundations Inc.

MUR: 6101

I. INTRODUCTION

This matter arises out of a complaint alleging that Foundations Inc. (n/k/a In Compliance Inc.) ("Foundations") made prohibited corporate contributions to Heller for Congress and Elisabeth Ballinger, in her official capacity as treasurer ("the Committee"), by extending credit to the Committee that remained outstanding for a long period of time. Based on available information indicating that the Committee owed in excess of \$19,000 to Foundations for over two years, the Commission finds reason to believe that Foundations made prohibited corporate contributions in violation of 2 U.S.C. § 441b(a).

II. FACTUAL BACKGROUND

The complaint in this matter raises questions about the Committee's debts owed to vendor Foundations.¹ The complainant asserts that Foundations provided goods or services to the Committee, and that the Committee failed to repay this entity. Complainant argues that Foundations extended credit to the Committee outside the normal course of business because the Committee has "regularly and promptly paid for [other] services rendered" during both the 2006 and 2008 campaign cycles, and because it is not the "usual or normal practice" for political consulting companies to allow debts to go unpaid for two years. Complaint at 2. The Complainant states that the credit extended to the Committee is not substantially similar to the credit extended to nonpolitical clients, because regional consulting firms do not "lend sums in excess of \$250,000 interest free for periods of over a year to non-political clients." *Id.*

¹ The Committee is the principal campaign committee for Dean Heller, who was elected to the U.S. House of Representatives for Nevada's Second Congressional District in 2006 and was reelected in 2008.

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1 In response, Foundations asserts that it was a registered corporation in Nevada from May
2 22, 2003, to March 14, 2007, at which time it formally changed its name to In Compliance Inc.
3 Foundations Response at 1, 2. Foundations argues that it is not the same entity as November
4 Inc., and "neither November Inc. nor any of its principals have an ownership interest in
5 Foundations Inc." *Id.* at 2. However, according to Foundations's response, November Inc.,
6 Foundations, Autumn Productions, and NI Operations shared office space and a post office box
7 during the time contemplated in the complaint, but November Inc. and Foundations "maintain
8 separate bank accounts and do not commingle funds." *Id.* Foundations also states that it was
9 "solely owned and operated" by the Committee's former treasurer, Chrissie Hastie. *Id.*
10 Nevertheless, Foundations' response does not address the outstanding debt owed to it by the
11 Committee.

12 **III. LEGAL ANALYSIS**

13 The issue presented in this case is whether Foundations made a prohibited contribution in
14 the form of an extension of credit to the Committee that has remained outstanding for more than
15 two years. The Federal Election Act of 1971, as amended ("the Act"), prohibits contributions to
16 a candidate or an authorized committee in excess of \$2,300 in connection with Federal elections,
17 and it prohibits corporations (including commercial vendors) from making contributions or
18 expenditures in connection with any election for Federal office. See 2 U.S.C. §§ 441a(a)(1) and
19 441b(a); 11 C.F.R. § 114.2. Similarly, the Act prohibits committees from knowingly accepting
20 excessive or prohibited contributions. See 2 U.S.C. §§ 441a(a)(1) and 441(b). A "contribution"
21 is defined as "any gift, subscription, loan, advance, or deposit of money or anything of value
22 made by any person for the purpose of influencing any election." 2 U.S.C. § 431(8)(A)(i). A
23 "commercial vendor" is any person who provides goods or services to a candidate or political

committee, and whose usual and normal business involves the sale, rental, lease, or provision of those goods or services. *See* 11 C.F.R. § 116.1(c).

The extension of credit to a candidate's authorized political committee by a commercial vendor is considered a contribution unless the credit is extended in the ordinary course of the person's business, and the terms are substantially similar to extensions of credit to nonpolitical debtors of similar risk and size of obligation. *See* 11 C.F.R. § 100.55; 11 C.F.R. § 116.3(b). An extension of credit includes, but is not limited to: (1) any agreement between the creditor and political committee that full payment is not due until after the creditor provides goods or services to the political committee; (2) any agreement between the creditor and political committee that the political committee will have additional time to pay the creditor beyond the previously agreed-to due date; and (3) the failure of the political committee to make full payment to the creditor by a previously agreed-to due date. *See* 11 C.F.R. § 116.1(c). In assessing whether a commercial vendor extended credit in the ordinary course of business, and thus did not make a contribution, the Commission will consider: (1) whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit; (2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade. *See* 11 C.F.R. § 116.3(c). A contribution also will result if a creditor fails to make a commercially reasonable attempt to collect the debt. *See* 11 C.F.R. § 100.55.

Foundations, which changed its name to In Compliance Inc. in 2007, is a registered corporation in Nevada and appears to be a commercial vendor under the Commission's regulations. *See* 11 C.F.R. § 116.1(c); *see also* Foundations Response at 1. The company's Dun

1 and Bradstreet report states that Foundations provides "business services" with annual sales of
2 \$160,000, and it appears to provide consulting services to Nevada campaigns.² The debt owed
3 by the Committee to Foundations is listed as consulting, treasury, and software support services,
4 as well as printing and postage expenses. *See* Schedule D, 2007 April Quarterly Report.

5 It appears that Foundations extended credit to the Committee because it did not require
6 full payment until after it rendered services to the Committee. *See* 11 C.F.R. § 116.1(e)(1); *see*
7 also Attachment A. For at least two years, the Committee has owed Foundations \$19,500. *See*
8 Attachment A. In its 2006 October Quarterly, the Committee reported a debt of \$13,048.27 to
9 Foundations, and this debt increased to \$29,131.61 in the Committee's 2006 Post-General
10 Report. *See id.* This amount fell to \$19,500 in the Committee's 2007 October Quarterly Report,
11 and has remained unchanged. *Id.*

12 Based on the available information, Foundations did not extend credit to the Committee
13 in the ordinary course of business and on substantially similar terms as those of nonpolitical
14 clients of similar risk and size of obligation. *See* 11 C.F.R. § 100.55; 11 C.F.R. § 116.3(b).
15 Although Foundations responded to the complaint, it did not provide information demonstrating
16 that it followed its established procedures and past practice, that it previously extended credit to
17 the Committee and received prompt payment in full, or that the extension of credit conformed to
18 the usual and normal practice in its trade or industry. *See* 11 C.F.R. § 116.3(c). As a result, we
19 have no information regarding its collection policies and practices, advance payment policies, or
20 billing cycles for nonpolitical debtors, and we lack information regarding the terms of the
21 transaction in this case. Moreover, we question whether a corporation with an estimated

² *See, e.g.,* Henderson City Council Campaign Contribution and Expense Report, at http://www.cityofhenderson.com/city_clerk/municipal_elections/Historical_Info/pdf/2007/CCE%201/03-27-2007_CCE_THOMAS_WAGNER.pdf (Mar. 27, 2007).

1 \$160,000 in annual sales could extend almost \$20,000 in credit for more than two years in the
2 ordinary course of business.

3 Similarly, Foundations provided no information demonstrating that it has acted in a
4 commercially reasonable manner in attempting to collect the debt owed by the Committee. The
5 Committee has still not paid Foundations in full, and its debt has been continuously outstanding
6 for at least two years. Although the Committee made disbursements to In Compliance Inc. after
7 Foundations changed its name in 2007, *see, e.g.*, 2008 October Quarterly Report (Committee
8 disbursed \$3,870 to In Compliance Inc. for "consulting and treasury" services), it appears that it
9 made those payments in connection with new services provided to the Committee because the
10 original debt owed to Foundations has remained unchanged since 2007. *See* Schedule B, 2008
11 Year-End Report. As a result, the Commission finds reason to believe that Foundations made a
12 prohibited corporate contribution to the Committee in violation of 2 U.S.C. § 441b(a).